IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.12 OF 2006
IN
COMPANY PETITION NO.779 OF 2003

Red Robin International Limited. Appellant
vs.
Clicquot Asia Limited Respondent

Mr.N.K.Mudnaney for the appellant.

Ms.Farishte Sethna i/b.M/s.Dunmorr Sett for the respondent.

CORAM : R.M. LODHA &
ANOOP V. MOHTA, JJ.

DATED : 27th January 2006

P.C.

Heard Mr.N.K.Mudnaney, the learned counsel for the appellant and Ms.Farishte Sethna, the learned counsel for the respondent.

2. By our order dated 20th January 2006, we granted time to the learned counsel for the appellant to seek instructions whether the appellant was prepared to deposit at least a sum of Rs.50,00,000/- before this Court.

3. Mr.Mudnaney, the learned counsel for the appellant submitted that he has no instructions to make a statement in that regard.

4. We perused the impugned order and the available

material.

5. The first contention is that the company petition is not maintainable as the statutory notice dated 10th March 2003 was given by Clicquot Hongkong Limited but the winding up petition has been filed by the Clicquot Asia Limited. The explanation by the present respondent is that the assets and liabilities of Clicquot Hongkong Limited were taken over by Clicquot Asia Limited under the Deed of Assignment dated 1.4.2003 and, accordingly, Clicquot Asia Limited was competent to file the winding up petition.

6. Prima facie, on consideration of Section 434 of the Companies Act, it cannot be said that statutory notice should be given by the party who files the company petition and not by the creditor who assigned his debt. This view find support in the judgement of the Rajasthan High Court in the case of Dawn Communications (P) Ltd. vs. Rajasthan Petro Synthetics Ltd., reported in (1995) 4 Comp. Law Journal 63 (Rajasthan). The learned Company Judge has noticed this aspect and held that the company petition is maintainable. Prima facie consideration of this aspect by the learned company Judge does not call for any interference.

7. Another contention in opposition to the winding up

petition is that the original petitioner (respondent herein) was not entitled to maintain the winding up petition in the absence of reendorsement of bill of exchange dated 2.1.2002. Admittedly the petitioners are holders of bill of exchange. The bill of exchange is in their custody. Even if it is not endorsed in their favour, it cannot be said that company could not have maintained the Suit. We are of the view that the admission of the winding up petition does not deserve to be interfered. The appellant shall be at liberty to contest the winding up petition on available grounds.

8. We are informed that pursuant to the impugned order, winding up petition has already been advertised in the Government Gazette as well as in the newspapers.

9. The appeal is dismissed in limine.

(R. M. LODHA, J.)

(ANOOP V. MOHTA, J.)